



CONNECTICUT STATE
COLLEGES & UNIVERSITIES
BOARD OF REGENTS FOR HIGHER EDUCATION

Testimony by R. Thomas Clark, Assistant Counsel
Board of Regents for Higher Education
Connecticut State Colleges & Universities
Presented to the Higher Education and Employment
Advancement Committee
February 11, 2014

Senators Cassano and Boucher, Representatives Willis and LeGeyt, and members of the Higher Education and Employment Advancement Committee, thank you for the opportunity to provide comment on **HB 5029: An Act Concerning Sexual Assault and Intimate Partner Violence on Campus**. My name is R. Thomas Clark, and I am Assistant Counsel for the Board of Regents for Higher Education which governs our state's four state universities, 12 community colleges and Charter Oak State College. Collectively, we are known as the Connecticut State Colleges & Universities. In my capacity as Assistant Counsel I serve as a coordinating officer for many matters of student affairs.

Connecticut's State Colleges and Universities are committed to doing all we can to prevent sexual assault and intimate partner violence on our campuses as well as to make easily accessible on campus the notices, policies, and response teams ready, willing and able to immediately respond in a compassionate, sensitive, and supportive manner to those members of our campus communities who choose to report or to disclose that they have been the victim of a sexual assault or intimate partner violence.

We sincerely appreciate the goals of this Bill and the expertise you have engaged to help focus our efforts in this regard. However, there are some provisions of the Bill that we wish to bring to your attention as they may benefit from further consideration. We stand ready to work with this Committee throughout the process of finalizing this language.

First, the Bill includes language in Section 2(f) that requires each institution to report "the number of disciplinary cases at the institution related to sexual assault and intimate partner violence resolved through mediation." It is our understanding that the resolution of sexual assault matters through mediation is clearly prohibited by the U. S. Department of Education's Office for Civil Rights, as expressed in its "Dear Colleague" Letter of April 2011. The letter states, "In cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault complaints." As such, this provision of the Bill conflicts with a federal mandate on the same topic.

Second, as I believe you heard at the November public hearing, giving those who have suffered a sexual assault the time, space and, support to obtain services, to process what has occurred to her or him and to decide how she or he may wish to proceed in reporting a sexual assault is crucially important if the objective is to treat such victims compassionately and to encourage the reporting of such violence. Thus, I would like to raise a concern regarding confidentiality. Section 2(b)(5)(E) of the Bill states that institutions must advise that they "shall not disclose the identity of the victim of the accused, except as necessary to carry out a disciplinary proceeding." This language again conflicts with federal guidance that instructs that if a complainant insists that his or her name or other identifiable information not be disclosed to an alleged perpetrator, the school should inform the complainant that its ability to respond may be limited, including in the taking of disciplinary action.

Third, in addition and as a separate issue, we have concerns that the additional qualifying language of Sec. 2(d), "Each such institution shall notify any such student or employee of the institution's obligation under state or federal law, if any, to investigate such assault or violence and the identity of such student or employee" may have a chilling effect on those who wish to report or disclose – which may run contrary to the intent of the proposed Bill.

The last concern I wish to raise with you today involves the requirements regarding the federal Clery Act's Annual Security Report and Connecticut's Uniform Campus Crime Report. Both documents address similar, but not the same elements, and serve similar purposes. However, reporting under Clery is due by October 1 and under the UCCR by January 1, although they both cover the previous, but different, calendar years. In addition, each has unique and conflicting definitions of reportable offenses and other matters. Furthermore, the geographic locations for which crimes are to be reported under Clery are different than under HB 5029. It is our hope and recommendation that you will agree to harmonize these requirements to make the accessing of information by students, parents, employees and others easier and more meaningful.

In closing, while we have concerns about whether the Bill makes appropriate accommodations for the differing campus environments among on-line colleges, such as Charter Oak State College, the Community Colleges and the State Universities, where the presence and relationship of students to the institutions are dramatically distinct and where the resources and personnel exist at much different levels out of mission driven necessity, we appreciate your efforts to assist us in providing campus environments that are safe, and, when it may be unfortunately necessary to do so, in responding to reports of sexual and intimate partner violence with the support and compassion for all involved.

Please contact Kyle Thomas, Legislative Program Manager, at 860-692-2350 if you have any questions regarding this testimony.